

REMARKS/ARGUMENTS

Claims 1, 3, 5, 7-10, 12-17, 19, 21, 23-26, and 28-32 are currently pending. Claims 1, 8, 9, 10, 13, 14, 15, 16, 17, 24, 26, 29, 30, 31, and 32 are amended herein. Applicant acknowledges receipt of the above-identified Office Action, and respectfully traverses the Office Action in its entirety.

RESPONSE TO ARGUMENTS ANALYSIS

In the previous Response, Applicant presented a series of arguments which refute the rejection raised in the previous Office Action. The instant Office Action includes a response to Applicant's arguments, but Applicant respectfully asserts that the response fails to apply proper legal reasoning, and in some cases misinterpreted Applicant's underlying arguments. First, the Office Action addresses Applicant's contention that MacGregor does not disclose consolidation, but rather aggregation of information. In response, MPEP §2106 is cited, which states that Office personnel are to give claims their broadest reasonable interpretation. Applicant does not dispute that this is what the MPEP states. However, it is respectfully submitted that MPEP §2106 is being misapplied. MPEP §2106 states that the language in the claims can be given its broadest reasonable interpretation. By contrast, the Office Action takes the position that MacGregor's term is to be given its broadest reasonable definition (see, e.g., Office Action, page 2, last paragraph). As a result, the Office Action adopts an overly broad interpretation of the term "consolidation" that is inconsistent with MacGregor's disclosure. This is clearly a misapplication of MPEP §2106, and well outside accepted USPTO practice. Applicant therefore respectfully requests that the Examiner reevaluate the argument and either properly apply MPEP §2106 or withdraw the argument and the rejection resulting therefrom.

Applicant also argued that MacGregor failed to teach the consolidation of computing resources as recited in the claims. The Office Action suggests that these features (i.e. consolidation of computing resources) are not recited in the claims. Applicant respectfully traverses, as the language was clearly in the preamble and repeatedly used in the second element of the claim. In fact, the Examiner cited the exact language in the rejections under 35 U.S.C. §112 (discussed below). Therefore, Applicant respectfully requests that the Examiner reevaluate the nature of this argument, or withdraw the rejection resulting therefrom.

Applicant further argued that MacGregor fails to teach or suggest consolidation of computing resources, storing computing device characteristics (i.e. information describing the

computing device) in data files, loading computing device characteristics into a relational database, or evaluating computing device characteristics in a relational database for consolidation purposes. In response, the Office Action merely asserts that Applicant has not provided any evidence or explanation to support the argument. Applicant respectfully traverses. By default, the U.S. Constitution guarantees authors and inventors rights in their works. The U.S. Patent and Trademark Office's role is to protect the public domain by ensuring that an inventor's claims do not read on that which is in the prior art. Applicant, in the role of the inventor, respectfully reminds the Examiner that it is the Office's duty to either provide a clear and accurate argument as to why all elements of Applicant's claims are in the prior art of record, or to allow the claims. Applicant has clearly and concisely laid out a set of elements which Applicant believes are not disclosed in the prior art, and Applicant points to the disclosure of MacGregor as a whole for such failure (there being no mention of those elements recited anywhere in MacGregor). The Office's failure to address these shortcomings in the prior art of record can be seen as an admission that such elements are not present. Therefore, Applicant respectfully requests that, absent a prima facie showing of anticipation, the rejection be withdrawn.

Applicant also argued that MacGregor is not relevant prior art (i.e., it is nonanalogous art). In response, the Office argued that applicant has not provided any evidence or explanation to support the argument. Applicant respectfully traverses and directs the Office's attention to the last paragraph on page 7 of the previous Office Action. It is Applicant's contention that MacGregor is directed to facilitating the management of network management events, and that one skilled in the art of computing resource consolidation would not look to a disclosure directed to leveraging instant messaging chat sessions to facilitate computing resource consolidation.

The Office Action goes on to cite MPEP §2131.05, and provides a form paragraph relevant to teaching away. Applicant's undersigned representative respectfully submits that a teaching away argument was not raised in the previous Response, and is therefore uncertain as to why this appears in the Office Action.

REJECTIONS UNDER 35 U.S.C. §112, First Paragraph

Claims 1, 3, 5, 7-10, 12-17, 19, 21, 23-26, and 28-32 stand rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the enablement requirement. Applicant respectfully traverses. Applicant respectfully directs the Offices attention to, among other

paragraphs, the disclosures in paragraphs [0006], [0007], [00035], [0037], and [0038], which clearly disclose consolidation of services, as recited in Applicant's claims. Applicant therefore respectfully requests that the rejection be withdrawn.

REJECTIONS UNDER 35 U.S.C. §102(e)

Claims 1, 3, 5, 7-10, 12-17, 19, 21, 23-26, and 28-32 stand rejected under 35 U.S.C. §102(a) as being anticipated by U.S. Patent Application Publication No. 20050102382 to MacGregor et al ("MacGregor"), Applicant respectfully traverses.

As described in the specification and recited in the claims, the instant claims are directed to a method and system for consolidating at least two computing devices, wherein information indicative of the characteristics of the services provided by computing devices (or a subset of the computing devices) is stored in at least two datasets. The characteristics stored in the at least two datasets comprises at least one of: system parameters, executable process parameters, and computing device database definition parameters. The characteristics of the at least two computing devices are loaded into a relational database for comparison to each other, thereby facilitating consolidation of the services performed on at least one of the computing devices such that the services are provided by another computing device instead. The net effect of which is to relocate the service and ultimately reduce the number of computing resources needed.

By contrast, MacGregor is directed to systems and methods which "utilizes an instant messaging system for providing a network management capability to acquire, cache, transfer, store, analyze, correlate and display network management information from diverse network components." (paragraph [0008]). While MacGregor does recite the term "consolidation" in paragraph [0008], it is respectfully submitted that the term, as used therein, is intended to be synonymous with "aggregation" or "grouping", rather than true consolidation (i.e., reduction in quantity) as recited in Applicant's claims and in Applicant's specification. This is evident, for example, in paragraph [0033], wherein MacGregor describes that "A group chat event manager (GEM) uses the existing notion of group chat between users to consolidate events into logical groups". Applicant's position is further bolstered by the fact that the term "consolidation" is recited in the abstract, paragraph [0008], and paragraph [0033], with only paragraph [0033] providing any description of what that term is supposed to mean.

While Applicant respectfully contends that MPEP §2106 is being misapplied in the instant Office Action, the arguments put forth by the Office in this regard in the Office Action

help to make Applicant's point. That is, in the Office Action it is suggested that MacGregor's use of the term "consolidation" is synonymous with aggregation and grouping ("MacGregor's consolidation, in definition, clearly has at least the following plain meanings of consolidation, aggregation, and grouping, etc." – Office Action, page 2, last paragraph). In the previous Response, and in a plain reading of the claim language, it is clear that Applicant's use of the term consolidation means a reduction in the number of servers providing a specific service. Applicant agrees with the Examiner that MacGregor does not disclose reduction in the number of servers providing a service, but merely the aggregation or grouping of data. Thus, as agreed to by the Examiner, it is respectfully submitted that MacGregor does not teach or suggest the consolidation of computing resources as recited in Applicant's claims, and Applicant respectfully requests that the Examiner withdraw the rejection.

Still further, it is clear from MacGregor that MacGregor does not teach or suggest comparing two datasets to "facilitate consolidation of services performed on at least one of the computing devices, the consolidation resulting in the moving of at least one of the services to a computing device other than the computing device providing the service". MacGregor discloses that network management events from different and diverse network entities are sent to one or more instant messaging "group chat" environments to facilitate the consolidation, processing, and correlation of network events. (Paragraph [0008]). That is, MacGregor discloses a simple user interface for aggregating network management events from multiple sources. Applicant respectfully contends that, for Applicant's claims to read on MacGregor's disclosure, MacGregor would have to remove (i.e. consolidate) certain network management events if more than one server were issuing the same event. Thus, for example, if Server A issued a network management event because of a hard drive error, and Server B issued a network management event because of a hard drive error, one of the two would be removed, which means a systems administrator would never know about that hard drive error. This is clearly opposite of the intent of MacGregor.

In a similar vein, Applicant respectfully contends that MacGregor does not teach or suggest moving of at least one service to another computing device. Instead, MacGregor merely discloses relaying network management events from a plurality of servers to a single management console (i.e., chat window). For Applicant's claims to read on MacGregor, MacGregor would have to disclose consolidating services. Thus, for example, management of

Server A's network management events would have to be consolidated onto Server B. MacGregor clearly fails to teach or suggest such service consolidation.

It is further suggested that since MacGregor is directed to providing network management capabilities (Abstract, paragraph [0008], etc.), MacGregor is so far removed from the field of Applicant's invention (computing resource consolidation) as to be irrelevant to the claimed invention. Put another way, one properly skilled in the art would not be motivated to look to MacGregor in attempting to consolidate computing systems, in part because MacGregor does not teach or suggest consolidation of computing resources, storing computing device characteristics (i.e., information describing the computing device) in data files, loading computing device characteristics into a relational database, or evaluating computing device characteristics in a relational database for consolidation purposes.

In issuing the instant Office Action, the Office has taken the position that the recitation of certain discrete elements (e.g., a database) within the given reference is sufficient to meet its burden of a prima facie showing of Anticipation. The Court of Appeals for the Federal Circuit has consistently held that "Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, **arranged as in the claim.**" Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick, 221 USPQ 481, 485 (Fed. Cir. 1984) (emphasis added). While certain discrete elements may be found within MacGregor, Applicant respectfully contends that those recitations, when read in context, clearly do not disclose "each and every element of the claimed invention arranged as in the claim". Applicant therefore respectfully requests that the rejections be withdrawn.

CONCLUSION

Having responded to all objections and rejections set forth in the outstanding Office Action, it is submitted that the currently pending claims are in condition for allowance and Notice to that effect is respectfully solicited. Additional characteristics or arguments may exist that distinguish the claims over the prior art, and Applicant respectfully reserves the right to present these arguments in the future, should they be necessary. In the event that the Examiner is of the opinion that a brief telephone or personal interview will facilitate allowance of one or more of the above claims, he is courteously requested to contact applicant's undersigned representative.

AUTHORIZATION

The Commissioner is authorized to charge any additional fees associated with this filing, and credit any overpayment, to Deposit Account No. 19-3790. If an extension of time is required, this should be considered a petition therefor. If the fees associated with a Request for Continued Examination are filed herewith, this should be considered a petition therefor.

Respectfully submitted,

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